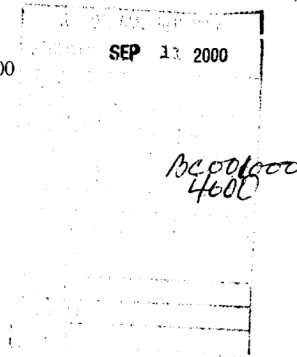


COMMENT LETTER

RESPONSES

JIM GERINGER
GOVERNORState Of Wyoming
Office of Federal Land PolicyART REESE
DIRECTOR

September 8, 2000



Mr. Robert Johnson, Regional Director
Lower Colorado Region
c/o Ms. Jayne Harkins, BC00-4600
Lower Colorado Regional Office
Bureau of Reclamation
P.O. Box 61470
Boulder City, Nevada 89006-1470

Dear Mr. Johnson:

On behalf of the State of Wyoming, this Office has reviewed the Draft Environmental Impact Statement for the Colorado River Interim Surplus Criteria. We also provided the information to all affected State agencies for their review, in accordance with State Clearinghouse procedures. Under separate cover I believe you received a letter from the Wyoming State Engineer's Office. I have enclosed a copy of that letter for your convenience.

State agency comments are specific to their respective agency missions. While the State defers to their respective technical expertise in developing a unified State position, the responsibility to ultimately articulate the official state policies and positions lies with the Governor or the Office of Federal Land Policy. However, having said that, in this particular case, we defer to the very able technical expertise of the State Engineer's Office. They have been active in the process since its inception and will continue to be involved.

This Office will require two copies of future information and documents regarding this project for continued distribution and review.

The State of Wyoming appreciates the opportunity to comment.

Sincerely,

Julie L. Hamilton
Assistant Director

Enclosure (1)

Herschler Building 1W ♦ 122 W. 25th Street ♦ Cheyenne, Wyoming 82002-0060
Phone (307) 777-7331 ♦ Fax (307) 777-3524

COMMENT LETTER

RESPONSES



State Engineer's Office

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JIM GERINGER
GOVERNOR

RICHARD G. STOCKDALE
ACTING STATE ENGINEER

August 28, 2000

Mr. Robert Johnson
Regional Director, Lower Colorado Region
c/o Ms. Jayne Harkins, BC00-4600
Lower Colorado Regional Office
Bureau of Reclamation
P.O. Box 61470
Boulder City, Nevada 89006-1470

Re: Transmittal of Comments on the Colorado River Interim Surplus Criteria Draft
Environmental Impact Statement, DES 00-25, filed July 7, 2000

Dear Mr. Johnson:

The Wyoming State Engineer's Office has reviewed the subject draft Environmental Impact Statement (DEIS) and supplemental information provided by the Bureau of Reclamation. As you are aware, the State Engineer's Office is quite supportive of the development of interim surplus criteria and has been an active participant in the deliberations and dialogue concerning this important matter. These comments are specific to this agency's statutory mission which includes the preservation of Wyoming's water allocations to safeguard the State's current and future water supplies. In that regard, our comments, along with those of other agencies who review and comment on the subject document, are meant to assist in defining the official State position. Accordingly, the following comments defer to and are subordinate to the official State Position which will be forthcoming by the close of the public comment period.

In our letter of June 30, 1999, this office responded to the May 18 and May 29, 1999 Federal Register notices advising of Reclamation's consideration of development of interim operating criteria. In that letter, we noted our support for the development of both surplus and shortage criteria and we noted our prior recommendation to the Secretary that the development of surplus and shortage criteria for the interim period be incorporated into the ongoing and well established AOP development process. Our letter expressed concerns about the scope, commitment of resources, usefulness and time schedule associated with preparation of a National Environmental Policy Act (NEPA) document for Reclamation's development effort. The subject DEIS does not contain a preferred alternative and has been delayed far beyond the original schedule publicized during the scoping meetings (that schedule specified "agency/public review and comment - January through March 2000"). The DEIS unfortunately does not address

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Interstate Streams
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shortage criteria with the exception that shortage "triggers" are embodied in certain of the surplus alternatives. Clear and concise explanations, beyond generalized statements, of the impacts and the relative differences on affected resources of the alternative analyzed are difficult to find in the DEIS.

While we feel that the document has a number of shortcomings that result from the wide-sweeping approach taken, the impact of the various alternatives and no preferred alternative being set forth, we are hopeful that the supplementary information published in the Federal Register on August 8th will be most helpful in crystallizing a preferred alternative and moving this important effort forward. The Wyoming State Engineer's Office continues to be supportive of implementing interim surplus operating criteria and urge Reclamation to expeditiously prepare the Final EIS and issue its record of decision as soon as practical.

The Wyoming State Engineer's Office offers the following specific comments on this draft environmental impact statement.

1

Page S-3, 3rd, 4th and 11th lines of "The California Colorado River Water Use Plan" - references to the California Colorado River Water Use Plan as the "California 4.4 Plan" or the "4.4 Plan" should be to the "California Colorado River Water Use Plan which was formerly known as the California 4.4 Plan."

2

Page S-6, Heading S.2.6, 6th line - The word "may" needs to be changed to "will" in this line. The sentence which begins on the previous line therefore would read: "The continuation of the interim surplus criteria through 2015 will be contingent upon satisfactory progress."

3
cont'd

Page S-8, S.3.4, 2nd paragraph - This paragraph states: "Mexico would receive its Treaty apportionment of Colorado River water under baseline conditions and all alternatives. The average probability of Mexico receiving its surplus entitlement of 200,000 af during any given year of the interim surplus criteria period is highest under the Flood Control Alternative (approximately 37 percent). The lowest average probability occurs under the shortage protection alternative (approximately 30 percent). The average probabilities of surplus deliveries to Mexico during any given year of the interim surplus criteria period under the baseline conditions and the Six States and California alternatives are 34, 32 and 30 percent, respectively." We note that these summary statements regarding the availability of surplus water for Mexico (the additional 200,000 af when there exists a surplus of waters of the Colorado River in excess of the amount necessary to satisfy uses in the United States) appear to be inconsistent with the statement found near the end of Section 1.1.4 on page 1-4 which reads: "This proposed action is not intended to identify conditions when Mexico may schedule this additional 0.2 maf (emphasis supplied). Reclamation is currently engaged in discussions with Mexico through the IBWC on the effects of this action."

Further, these summary statements relating the probability of occurrence of surplus water for Mexico seem to imply that the DEIS and its underlying hydrological simulation studies have

1: References to California's draft Colorado River Water Use Plan (CA Plan) have been corrected to distinguish it from their previous draft "4.4 Plan" where appropriate in the FEIS.

2: The Secretary's decision to continue interim surplus criteria within the 15-year interim period would be based on a number of factors which may include satisfactory progress towards meeting the goals of California's Colorado River Water Use Plan. Please refer to the response to Comment 33-3.

3: See response to Comment No. 11-13, regarding additional water deliveries to Mexico. This FEIS does not identify conditions for such deliveries.

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prejudged that there would be Colorado River surplus waters in excess of the amount necessary to satisfy uses in the United States. The intent of the interim surplus operating criteria was set forth in the May 18, 1999 Federal Register notice (64 FR 27008 et seq.) as being:

"Summary: The Department of the Interior, Bureau of Reclamation ("Reclamation") is considering development of specific criteria that will identify those circumstances under which the Secretary of the Interior ("Secretary") may make Colorado River water available for delivery to the States of Arizona, California and Nevada (Lower Division States or Lower Basin) in excess of the 7,500,000 acre-foot Lower Basin apportionment."

In the "Supplementary Information" section on page 27009, the Notice stated:

"In recent years, demand for Colorado River water in Arizona, California, and Nevada has exceeded the Lower Basin's 7,500,000 acre-foot basic apportionment. As a result, criteria for determining the availability of surplus has become a matter of increased importance. Under these circumstances, the Secretary believes that it may be prudent to develop specific criteria that will guide the Secretary's annual decision regarding the quantity of Colorado River water available for delivery to the Lower Basin States.

The "Summary" section of the May 28, 1999 *Federal Register* notice regarding the public meetings on the development of Surplus Criteria for Management of the Colorado River contained the same wording cited above. We suggest, based on the above, that Reclamation should recognize the intent expressed in the *Federal Register* statements and the wording found on page 1-4 and therefore revise by excluding the discussion of the additional water deliveries to Mexico in the Final Environmental Impact Statement for this proposed action.

Page 1-11, 3rd paragraph, 1st line - "Section VII" should be changed to "Article VII" in order to be consistent with the wording in the remainder of this section and with the wording of the Colorado River Compact.

Page 1-12, Section 1.3.2.2.2, middle of the paragraph - Herein a sentence is found which reads: "The apportionments to the Lower Basin were established by the BCPA and confirmed by the Decree." This statement is technically incorrect. Milton N. Nathanson, in *Updating the Hoover Dam Documents*, (United States Department of the Interior, Bureau of Reclamation, United States Government Printing Office, Denver, Colorado, 1978) wrote on pages 8 and 9 of this book prepared by Reclamation that:

"Section 4(a) of the Boulder Canyon Project Act authorized the Lower Basin States of Arizona, California and Nevada to enter into an agreement providing that of the 7.5 maf/yr annually apportioned to the Lower Basin by Article III(a) of the Compact there shall be apportioned to Nevada, 300,000 acre-feet annually ...

4: The suggested edit was included in the FEIS.

5: Comment noted.

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The three State apportionment was never agreed upon by the Lower Division States despite negotiations in 1929 and 1930. However, the Supreme Court Opinion of June 3, 1963, in *Arizona v. California* (373 U.S. 546) concluded that Congress had made such an apportionment by authorizing the Secretary to accomplish this division. This was done by the Secretary's contracts for the delivery of water in the Lower Basin States and by providing (Section 5) that no person could have the use of Colorado River water without a contract with the Secretary for permanent service."

6

Page 1-14, Section 1.3.3, 3rd line - The text states that the LROC "address the operation of the Colorado River reservoirs ..." Reference to the second sentence of the LROC (Attachment A) will clarify that "They are to control the coordinated long-range operation of the storage reservoirs in the Colorado River Basin ..." Accordingly, the word "address" should be changed to "control" or "govern."

7

Page 1-15, second line - Similar to the comment offered immediately above, the word "addressed" is inappropriately used in discussing the LROC provisions regarding equalization of storage between Lakes Powell and Mead. The LROC use the word "shall" and hence the word "addressed" should be changed to "prescribed" or "mandated."

8

Page 1-16, Section 1.3.5, first line - We suggest inserting the word "federal" after "numerous" and before "reservoirs" in order to clarify this sentence. The aggregate storage capacity of all reservoirs in the Colorado River system would be much greater than this sentence indicates.

9

Page 1-20, Section 1.3.6, last sentence - Please clarify the sentence which reads: "Reclamation has the responsibility to maintain the floodway." What does "maintain" mean in the context of this sentence and this section of the DEIS?

10

Page 1-21, Section 1.4.1 - We suggest that references herein to the California 4.4 Plan or the 4.4 Plan make clear that the California Colorado River Water Use Plan was formerly referred to as the 4.4 Plan and due to the inaccuracy of this term it is no longer used.

11
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below

Page 1-22, Section 1.4.1, 2nd full paragraph, 6th line - The choice of the word "may" in the sentence stating: "Therefore, regardless of which alternative is ultimately selected, failure of California to carry out the 4.4. Plan (sic) may result in termination or suspended application of the 15-year interim surplus criteria and reversion to the current system of surplus determinations that are made through the AOP process (emphasis supplied)." The word "may" must be changed to "will." In the following sentence, which reads: "Therefore, the Secretary may condition the continuation of interim surplus criteria for the entire period through 2015 on a showing of satisfactory progress in implementing the 4.4 Plan (sic) (emphasis supplied)." In this sentence, the word "may" must be changed to "will." A fundamental tenet of the willingness of Wyoming and other Colorado River Basin states to concur with the interim surplus operating criteria is enforcement of timely implementation of the California Colorado River Water Use Plan. This

6: The suggested edit was included in the FEIS.

7: The word "addressed" was changed to "included", since the requirement is included in the LROC.

8: Comment noted. The wording was not modified in the FEIS.

9: The Secretary of the Interior and Reclamation has the responsibility to conduct reviews of the floodway mapping at 5-year intervals, annually inspect the floodway to determine if any encroachment is occurring, and perform other activities. The activities for Reclamation and other federal entities as recommended to Congress are reported in the "Final Report of the Secretary of the Interior to the Congress of the United States on the Colorado River Floodway Protection Act", dated October 1992.

10: Comment noted. The term 4.4 Plan is no longer used to refer to California's current plan.

11: Comment noted. The term 4.4 Plan is no longer used to refer to California's current plan.

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wording, repeated in this document several places, without clarification is troubling and is inconsistent with Secretary Babbitt's pronouncements, negotiations among the seven Colorado River Basin States and understandings reached between the Department of Interior and the seven Colorado River Basin States over a period of numerous years.

12

Page 2-1, Section 2.2.1.1 - The description that is found in this section of the spill avoidance or "R" strategy provides a well-worded and concise description of the strategy.

12: Comment noted.

13

Page 2-3, Section 2.2.3, 1st paragraph, 5th line - We suggest that the word "under" that appears after "criteria" be changed to "within."

13: The change was made.

14

Page 2-5, Section 2.3, 2nd paragraph - This paragraph states: "As noted above, the 75R operating strategy is not presented as an alternative for adoption. If an interim surplus criteria alternative is not implemented, it is presumed that the Secretary would determine surplus conditions using the same dynamic considerations currently used in the Secretary's annual determination (in the AOP), as discussed previously." While this is certainly the easiest and cleanest assumption that could be made for purposes of this DEIS, it does not seem to this office that this scenario is very likely. This assumption, as embodied in the above cited statement, ignores the fact that the Colorado River Management Work Group has discussed and has initiated several faltering attempts to develop more specific surplus and shortage operating criteria during the course of its work and discussions. The need for more specific criteria has been on the table for a number of years at this point in time. We would suggest that this wording be revised to indicate the difficulty in speculating what would be developed as the more specific criteria to be used for making surplus determinations and therefore, on that basis, it is presumed that the Secretary would determine surplus conditions using the same dynamic considerations currently used.

14: Comment noted.

15

Page 2-9, Section 2.3.3.2, 1st paragraph - As acknowledged later in the text (page 2-10) the Six States alternative proposed that Tier 1 would be established by the "70R Line," NOT the "75R Line" as stated in the text in the 3rd line from the bottom of the page.

15: See response to Comment 37-8.

16

Page 2-10, Section 2.3.3.2.1, 3rd line - Same comment as immediately above, i.e., the Six States Alternative Tier 1 was based on the "70R line," NOT the "75R line" as stated here in the text.

16: See response to Comment 37-8.

17

Page 2-10, Section 2.3.3.2.1, 2nd paragraph - The text correctly states in the first sentence of this paragraph that: "It should be noted that the original Six State Plan uses the 70R strategy as the Tier 1 trigger" The second sentence states: "However, for modeling consistency with the baseline, the 75R strategy was used in this analysis for the Six States Alternative Tier 1 trigger." We request clarification about why it is necessary to have "modeling consistency" with the baseline. What does "modeling consistency" mean as used in this sentence. Certainly other questions could be asked about consistency regarding what was done with the other alternatives. The 70R and 75R strategies have an assumed annual runoff that varies by 800,000 acre-feet.

17: Comment noted. See response to Comment 37-8.

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| 18 | Page 3.3-3, Section 3.3.1.2, 1st line - We suggest that the words "and pumping from Lake Mead" be added after "annual releases" and before "of at least 7.5 maf" in this first sentence of this paragraph. Without this clarification, the sentence is technically incorrect. | 18: The first sentence of the first paragraph in Section 3.3.1.2 has been changed to read as follows - Hoover Dam is managed to provide at least 7.5 maf annually for consumptive use by the Lower Division states plus the United States' obligation to Mexico. |
| 19 | Page 4-3, Section 4.4, 1st full paragraph, 7th line - As commented on above, we object to the use of the word "may" and feel that it must be changed to "will" in the sentence beginning in the 5th line of this paragraph. The seven state negotiations over the past several years have been based on the principle that if the State of California fails to meet its water conservation and management goals throughout the stipulated term of implementation of the criteria, the Secretary will terminate the interim surplus criteria and operations will revert to the present manner of determining whether a surplus water supply condition exists. | 19: The Secretary's decision to continue interim surplus criteria within the 15-year interim period would be based on a number of factors which may include satisfactory progress towards meeting the goals of the California Colorado River Water Use Plan. See Attachment I. |
| 20 | Page 5-1, Section 5.2, 1st paragraph - Change the word "on" to "in" in front of "Colorado River operations." | 20: Comment noted. |
| 21 | Page REF-22, middle of the page - There is a problem with a missing line space between the citation for "Sogge, et al." and "Thwaites." There is an extra line space that should be removed between "Unitt" and "USBR." | 21: Comment noted. Change made in FEIS. |
| 22 | Page LOP-3 - Is it Barbara "Ralston" or Barbara "Raulston" in the middle of this page? | 22: Correction has been made. "Raulston" is the correct spelling. |
| 23 | Attachment A cover page - the use of the word "guidelines" in the 3rd line of the paragraph on this cover page inappropriately understates the import and effect of the LROC. We would suggest a wording revision that eliminates use of this word. | 23: Comment noted. The change has been made. |
| 24 | Attachment A, page 2, last line "releases" should be "released." | 24: The change was made. |
| 25 | Attachment I, Detailed Modeling Documentation - We are disappointed to note that documentation of the modeling was deferred to the FEIS and that the reader is merely referred to Section 3.3.3.3 by the text on the cover-page of this Attachment. We presume that there will be sufficient opportunities to learn more about the details at the August 15, 2000 modeling meeting that is being held in Las Vegas, Nevada. Perhaps Reclamation will hear from interested reviewers and the Basin States at that meeting the sorts of descriptive information that will be most useful to include in Attachment I when it is prepared for the FEIS. | 25: Attachment I was prepared following the publication of the DEIS. Copies of Attachment I were made available to the public at the technical presentation on August 15, 2000, at all the public hearings, and as requested by mail. The Detailed Modeling Documentation is Attachment J to the FEIS. |
| 26 | Attachment P, entitled "Public Scoping Process," page 1, next to last paragraph - The first sentence of this paragraph states: "Two notices were published in the <u>Federal Register</u> regarding the proposed reallocation of Colorado River water." We believe that the choice of the words "proposed reallocation of Colorado River water" is both unfortunate and inaccurate. The adoption of more specific surplus criteria that will be applied during the interim period to make surplus determinations is not properly characterized, in our view, as a reallocation of Colorado River water. We request that this wording be changed to more specifically state the effect of the proposed action. | 26: The sentence has been corrected with wording that better matches the Federal Register Notice: "development of surplus criteria for management of the Colorado River." |

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27 | Attachment P, page 2, Table 1 - The reference to "Las Vegas, CA" in the second column should be to "Las Vegas, NV."

27: This change has been made in the document.

28 | Attachment P, pages 5-10, which encompass "Table 2" - this representation of the comments that were received during the scoping meetings and in response to the request for comments is exceedingly weak in our evaluation. The great lack of detail and extreme generalization associated with this format for describing and characterizing the comments that were received during the scoping process makes the presentation of this information of very little value. This section also fails to describe how the comments were used in any manner in the preparation of the DEIS, which is disappointing to our agency, who participated in one of the public meetings and provided a comment letter.

28: Table 2 is intended as a summary of the comments received. The specialists working on this EIS were provided with complete sets of the comment letters and with transcripts of the scoping meetings.

Thank you for the opportunity to submit these comments on the Colorado River Interim Surplus Criteria Draft Environmental Impact Statement. Should you have any questions, please don't hesitate to contact me at (307) 777-6151 or via e-mail at jshiel@state.wy.us. We look forward to expeditious preparation of the final environmental impact statement and the execution of the record of decision that will allow the implementation of interim surplus criteria for making surplus water determinations in the Secretary's Colorado River Annual Operating Plan during the interim period.

With best regards,



John W. Shields
Interstate Streams Engineer

cc: Seven Colorado River Basin States Representatives
Wayne Cook, Upper Colorado River Commission